

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 ALLEN S. HEUSNER,

10 Petitioner,

11 vs.

12 DWIGHT NEVEN, et al.,

13 Respondents.
14

Case No. 2:14-cv-01119-RFB-GWF

ORDER

15 Petitioner has filed an amended petition (ECF No. 22). The court has reviewed it pursuant to
16 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will
17 dismiss three grounds. Respondents will need to respond to the rest of the grounds.

18 Grounds 16 and 26 are claims of ineffective assistance of counsel. A petitioner claiming
19 ineffective assistance of counsel must demonstrate (1) that the defense attorney's representation "fell
20 below an objective standard of reasonableness," Strickland v. Washington, 466 U.S. 668, 688 (1984),
21 and (2) that the attorney's deficient performance prejudiced the defendant such that "there is a
22 reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would
23 have been different," id. at 694. "[T]here is no reason for a court deciding an ineffective assistance
24 claim to approach the inquiry in the same order or even to address both components of the inquiry if
25 the defendant makes an insufficient showing on one." Id. at 697.

26 In ground 16, petitioner argues that trial counsel provided ineffective assistance because trial
27 counsel did not object to the instruction that defined reasonable doubt. Petitioner also argues that
28 appellate counsel provided ineffective assistance because on direct appeal appellate counsel did not

1 challenge the constitutionality of the reasonable-doubt instruction. The reasonable-doubt instruction
2 that petitioner quotes is constitutional. Ramirez v. Hatcher, 136 F.3d 1209, 1211-15 (9th Cir. 1998).
3 The court of appeals also has held that the issue is not worthy of a certificate of appealability. Nevius
4 v. McDaniel, 218 F.3d 940, 944-45 (9th Cir. 2000). The lack of an objection was not deficient
5 performance, and petitioner did not suffer prejudice. Ground 16 is without merit on its face, and the
6 court dismisses it.

7 In ground 26, petitioner argues that counsel failed to challenge the validity of the Nevada
8 Revised Statutes under the doctrine of separation of powers because in 1951 the Nevada Legislature
9 appointed three justices of the Nevada Supreme Court to a statute revision commission. Regardless of
10 who was on that commission, on January 25, 1957 the Nevada Legislature duly enacted the Nevada
11 Revised Statutes as the laws of Nevada. 1957 Nev. Stat 1-4. Furthermore, the Nevada Legislature has
12 duly amended the statutes governing arson, burglary, murder, and the use of a deadly weapon in the
13 years since 1957.¹ The issue underlying this ground is completely without merit and is frivolous.
14 Counsel did not perform deficiently, and petitioner suffered no prejudice, by not raising this issue before
15 the state courts. Ground 26 is without merit on its face, and the court dismisses it.

16 In ground 24, petitioner attempts to incorporate his grounds in his state habeas corpus petition
17 by reference to that petition. However, the state habeas corpus petition is not attached to the amended
18 federal petition. Ground 24 does not present any claim, and the court dismisses it.

19 IT IS THEREFORE ORDERED that grounds 16, 24, and 26 of the amended petition (ECF No.
20 22) are **DISMISSED**.

21 ///

22 ///

23 ///

24 ///

25

26

27

28

¹
Petitioner is convicted of burglary with the use of a deadly weapon, first-degree murder with the use
of a deadly weapon, and first-degree arson.

1 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date of
2 entry of this order to answer or otherwise respond to the amended petition (ECF No. 22). Respondents
3 shall raise all potential affirmative defenses in the initial responsive pleading, including lack of
4 exhaustion and procedural default. Successive motions to dismiss will not be entertained. If
5 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
6 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five (45)
7 days from the date on which the answer is served to file a reply. If respondents file a motion, then the
8 briefing schedule of Local Rule LR 7-2 shall apply.

9 DATED: January 9, 2018

10
11 
12 _____
13 RICHARD F. BOULWARE, II
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28